


SIGNED.



Dated: September 24, 2009


JAMES M. MARLAR
Chief Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:) Chapter 13
WILLIAM R COPE and RUBY)
ELIZABETH COPE,) No. 4:09-bk-04215-JMM
Debtors.) **MEMORANDUM DECISION**

Before the court is an objection to confirmation of the Debtors' Chapter 13 plan (DN 16) filed by JPMorgan Chase Bank, N.A. ("Chase"). Argument on the issues was heard on August 19, 2009. The court now rules.

BACKGROUND

The Debtors filed a Chapter 13 case on March 9, 2009. Their plan was filed on March 27, 2009. In the plan, the Debtors dealt with their two vehicles, upon which Chase holds liens, in the following manner:

Vehicle	Total Claim	Coll Value/ Secured Claim	Int. Rate	Mo. Pymt (If not pro rata)	1st/Last Pymt. (Anticipated)	Anticipated Total
2006 Dodge Durango	\$20,000	\$13,500	4.25%	Pro-Rata	5-40	\$14,624.42
2006 Dodge Dakota	\$22,261	\$11,000	4.25%	Pro-Rata	5-40	\$11,916.18

1 The Debtors propose to pay to Chase only the collateral's actual value, not the full amount of the
2 claims, commonly called a "cramdown."

3 The plan was a 60-month plan, and the Debtors were to pay the Trustee \$835 per
4 month.

5 6 **CHASE'S OBJECTION**

7 8 **1. 910-day Proscription**

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10 On May 1, 2009, Chase objected to its treatment under the plan, and opposed
11 confirmation. Its grounds for each vehicle were the same, that each had been purchased within 910
12 days of the filing date. In that event, 11 U.S.C. § 1325(a) would not allow a "cramdown." Instead,
13 each unit would have to be paid in full.

14 The 2006 Dodge Durango was acquired from Budget Resale, Inc. on February 3, 2007.
15 That contract was later assigned to Chase. That vehicle was therefore acquired within the 910 days
16 preceding bankruptcy.

17 The 2006 Dodge Dakota Quad Cat truck was acquired by the Debtors from Budget
18 Resale, Inc. on October 14, 2006. Chase now owns the commercial paper evidencing the debt and
19 security agreement. It also falls within the 910-day prohibition period.

20 Thus, neither vehicle may be crammed down. Chase's objection to the plan will be
21 SUSTAINED on that ground.

22 23 **2. What is the secured value to be paid 100%?**

24 25 **A. Dodge Durango**

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27 The parties disagree as to what amount should be paid in full.
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1 As to the 2006 Dodge Durango, Chase claims it is owed \$30,286.65. However, at the
2 hearing, the parties appeared to have settled the issue of the balance due, after consideration of the
3 Ninth Circuit BAP's *Penrod* decision, 392 B.R. 835 (9th Cir. BAP 2008).

4 Therefore, the court assumes that this matter (as to this vehicle) is resolved, and
5 requests only that the parties submit an order that confirms their understanding as to the balance
6 owed, and how it is to be treated under any confirmed plan.

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8 **B. Dodge Dakota Quad Cab truck**

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10 More problematic is the Dodge Dakota Quad Cab truck. The Debtors maintain that
11 the balance due is \$22,261, while the creditor seeks \$22,345.01. This minor difference does not
12 appear to need court determination, as the parties should be able to adjust their small disagreement.

13 The real issue appears to relate to something else. It is that the Debtors maintain that
14 this vehicle is not used primarily for personal use, and therefore § 1325(a)'s 910-day provision is
15 inapplicable. Thus, the Debtors contend that the vehicle may be "crammed down" to its value.

16 The court agrees that a further evidentiary hearing is necessary. On this issue, the
17 court will hear evidence on **October 27, 2009, at 10:00 a.m.**, (one-hour allowed) Courtroom 329,
18 U.S. Bankruptcy Court, 38 South Scott Avenue, Tucson, Arizona. If there are any *Penrod* issues
19 associated with the Dodge Dakota, the parties are asked to provide a joint statement as to the exact
20 issues which the court shall be asked to decide.

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22 DATED AND SIGNED ABOVE.

23 COPIES to be sent by the Bankruptcy Notification
24 Center ("BNC") to the following:

25 Ronald Ryan, Attorney for Debtors

26 Patricia Doyle-Kossick, Attorney for JPMorgan Chase Bank, N.A.

27 Dianne C. Kerns, Trustee

28 Office of the U.S. Trustee